



AMENDMENTS

Please amend the application as indicated hereafter.

In the Claims

Please cancel claims 1 – 18 without prejudice or disclaimer.

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed May 2, 2002. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

1. Present Status of Patent Application

Upon entry of the amendments in this response, claims 19 - 28 remain pending in the present application. It is believed that the foregoing amendments add no new matter to the present application.

2. Response To Objections/Rejections

Response To Claim Rejections Based on Double Patenting Over U.S. Patent 6,230,203

Claims 1 - 18 stand rejected for double patenting over U.S. Patent No. 6,230,203. This First Response with Amendments and Remarks cancels claims 1 – 18 without prejudice or disclaimer. Thus, Applicants respectfully request this double patenting rejection of claims 1 – 18 be withdrawn.

Response To Claim Rejections Based Under 35 U.S.C. Section 103

Independent claim 19 and claims 20 – 28, which depend therefrom, were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Yoshikawa et al.* (U.S. Patent No. 6,249,532), hereinafter *Yoshikawa*, in view of *Land et al.* (U.S. Patent No. 5,751,706), hereinafter *Land*. Applicants respectfully traverse this rejection.

Applicants' independent claim 19 states:

19. A method of providing statistics for billing users of data services provided over a cable television network comprising the steps of
monitoring session duration of a link to a network access device
and storing data related thereto,
monitoring ***amount of data transferred to and from*** a network access device and storing data related thereto, and
monitoring ***amount of data lost*** in said link and storing data related thereto, the statistics permitting a flexible billing structure.

(Emphasis Added.)

Yoshikawa describes a “billing system for use in a chargeable program broadcasting [that] is capable of reliably ***billing a subscriber for program reception*** while preventing unauthorized reception thereof.” (See abstract of U.S. Patent No. 6,249,532, emphasis added.) Thus, in *Yoshikawa* billing is based on programs and not on “amount of data transferred” nor on “amount of data lost” as recited in Applicants' independent claim 19. For example, *Yoshikawa* states that the billing system includes “a receiving monitoring circuit for monitoring a ***program receiving condition*** such as ***program received and time of receiving in minute[s]*** and a billing check circuit for checking a billing to a subscriber by determining a receiving fee according to an error condition and the receiving condition monitored.” (U.S. Patent No. 6,249,532, col. 3, lines 53 – 58, emphasis added.) Furthermore, column 5, lines 42 – 57 of *Yoshikawa*

describe the process of billing for programs and that “[t]he billing side gets a *title of the program* which is viewed by the subscriber from the received information and bills the subscriber correspondingly.” (Col. 5, lines 51 – 53, emphasis added.) In addition, *Yoshikawa* describes “a billing check circuit 114 for producing a billing information for the *program reception fee on the basis of the program information* separated by the separator circuit 112 and [as] a result of the error check performed by the error checker 113.” (Col. 8, lines 32 – 36, emphasis added.)

Also, in the system of *Yoshikawa* “it is possible to reduce or even cancel *the bill for the subscriber when the reception of the program* is difficult due to transmission error which can be determined by using the error information.” (Col. 9, lines 35 – 38.) Moreover, *Yoshikawa* includes an “error checker 413 for confirming whether or not the *video signal transmitted* from the relay transmitter 620 is received correctly [and] a billing check circuit 414 for producing a billing information for the *program reception fee on the basis of the program information* separated by the separator circuit 412 and [as] a result of the error check performed by the error checker 413.” (Col. 11, lines 49 – 55, emphasis added.) Similar wording to column 11, lines 49 – 55 also appears in column 14, lines 4 – 9 of *Yoshikawa*. In addition, *Yoshikawa* states, “When the *program is received* by the receiving terminal correctly, the company can bill, without any delay, the terminal or the subscriber *according to the program name, the company name, the copyright owner and/or receiving time.*” (Col. 14, lines 6 – 15, emphasis added.) Thus, *Yoshikawa* relates to billing based on “program reception” and not on “amount of data” as recited in Applicants’ independent claim 19.

Furthermore, *Yoshikawa* relates to billing based on “program *reception*” and not on “data transferred *to and from*” as recited in Applicants’ independent claim 19. This can be seen from FIGs. 1A, 4, and 7 of *Yoshikawa* that show the error check blocks 113, 413, and 713 respectively looking at downstream program information to provide input to bill check blocks 114, 414, and 714 respectively that send billing information back upstream. Thus, *Yoshikawa* appears to teach only a unidirectional transmission of a program, rather than teaching the “amount of data transferred *to and from a network access device*” as recited in Applicants’ independent claim 19. (Emphasis added.) Therefore, *Yoshikawa* does not disclose, teach, or suggest the elements of Applicants’ independent claim 19.

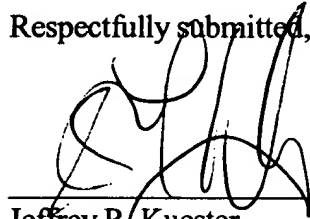
With regard to *Land*, the abstract of *Land* states that the “invention provides a path establishment device and method for establishing a path for a telecommunications call” (*i.e.*, a phone call). The phone call of *Land* uses “a potentially less expensive packet-switched telecommunications network as a long distance carrier between two public switched telecommunications networks.” (See abstract of *Land*.) FIG. 3 of *Land* shows the monitoring system 310 for the packet-based telecommunications network 140. The monitoring system of *Land* is used to help in keeping up with “full information on the originator, destination, duration, and length of the call[, which] would not normally be available to the packet-based network.” (Col. 3, lines 44 – 47.) Note that the system of *Land* does not describe keeping track of the “amount of data transferred” or the “amount of data lost” as recited in Applicants’ independent claim 19. The function of the monitoring computer of *Land* is further described from column 11, line 66 through column 12, line 20. According to that section of *Land*:

Furthermore, the combination of *Yoshikawa* and *Land* do not disclose, teach, or suggest all the elements of Applicants' independent claim 19 particularly with respect to "amount of data transferred" and "amount of data lost" as recited in Applicants' independent claim 19. Thus, Applicants' independent claim 19 is allowable over the combination of *Yoshikawa* and *Land*. In addition, dependent claims 20 - 28, which depend on independent claim 19, are allowable over *Yoshikawa* and *Land* as a matter of law because the dependent claims 20 - 28 contain all elements of the respective independent base claim. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed and that the pending claims of 19 – 28 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



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